

Application No. : 09/826,690  
Applicant : Harbaugh  
Filed : April 5, 2001  
TC/A.U. : 3629  
Examiner : Smith, T.  
Docket No. : 6994-1

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**AFFIDAVIT OF JOSEPH HARBAUGH**

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I, Joseph D. Harbaugh, being duly sworn, hereby aver:

1. I am the Dean of the Law Center of Nova Southeastern University, Fort Lauderdale, Florida ("NSU Law").
2. The Section of Legal Education and Admissions to the Bar of the American Bar Association ("ABA"), the organization certified by the U.S. Department of Education as the accrediting body for legal education, has mandated that law schools shall not admit applicants who do not appear capable of satisfactorily completing their academic program and they must require each applicant to take a valid and reliable admission test to assess the applicant's capability of satisfactorily completing the educational program.
3. The Law School Admission Council ("LSAC") developed the Law School Admission Test ("LSAT"), a standardized test of an applicant's ability and aptitude to succeed in the critical first year of law school. The LSAT is scored from 120 to 180; the median score of applicant test-takers is about 150; a score of 160 is approximately the 80<sup>th</sup> percentile; a score of 145 equates to about the 25<sup>th</sup> percentile.
4. The vast majority of students admitted to accredited law schools have LSAT scores at or above the 150 median. Few students with LSAT scores at or below 145 are admitted to any law school. See ABA-LSAC Official Guide to ABA-Approved Law Schools (2005 Edition) for LSAT scores of admitted students at the 187 accredited law schools. Other than students admitted through its AAMPLE® program, the same is true at NSU Law.

5. The LSAC has known for some time that a significant number of applicants who score in the lowest quartile of LSAT test takers will equal or exceed the actual academic performance of those who test at much higher levels.
  - a. For example, more than one-fourth of those scoring 140 on LSAT, if admitted to law school, will match or surpass the first year academic achievements of half of those who scored 160 on the same standardized exam.
  - b. Likewise, the LSAC has determined that almost 40 percent of the 145 LSAT test takers will do as well or better in the first year of law school than two-thirds of those who scored 155. See, P. Shelton, "LSAT: Good – But Not That Good," LAW SERVICES REPORTER, Sept./Oct. 1997 at 2.
  - c. While the LSAC can predict these outcomes with a high degree of accuracy, it cannot identify which applicants who score 140 or 145 will perform as well as those attaining significantly higher LSAT test grades.
6. Furthermore, there is a well-documented disparity between the scores achieved by majority and minority LSAT test takers.
  - a. As a group, minority applicants score one standard deviation (about 9 points) below majority test takers on the LSAT.
  - b. As a result, 42 percent of the minority applicants to law school are in the 130 to 144 LSAT score band. This compares with 13.5 percent of Caucasians who test at this level.
7. NSU Law's AAMPLE® program is a valid and reliable alternative admission testing process that adds a key and decisive dimension to the evaluation of applicants who have scored 145 or below on the LSAT. AAMPLE® goes beyond the LSAT to assist law school admission officials in identifying students they would not otherwise consider. A significant percentage of the students so identified by the AAMPLE® alternative admission process are members of minority groups.
8. As indicated in the following table, NSU Law's AAMPLE® program has identified applicants who have scored in the lowest quartile on the LSAT but who have the ability and the aptitude to be successful in law school.

<b>AAMPLE Online® Success Rate – By LSAT Score</b>		
	<b>TOTAL SUCCESSFUL</b> (% of test-takers successful in indicated LSAT band)	<b>TOTAL AAMPLE® TEST- TAKERS</b>
<b>140-145<sup>1</sup></b>	54 (41%)	131
<b>135-139</b>	30 (26%)	114
<b>130-134</b>	7 (18%)	38
<b>125-129<sup>2</sup></b>	0 (0%)	3
<b>All</b>	<b>87 (30%)</b>	<b>286</b>

Moreover, the following table makes it clear that students admitted through the AAMPLE® admission process are successful in law school despite their relatively poor performance on the LSAT. It also is worth noting that more than half (56%) of the students admitted by NSU Law through the AAMPLE® program are members of minority groups.

<b>1L GPA's of AAMPLE Online® Students –Through Fall Term 2004</b>					
	<b>Whites</b>	<b>Blacks</b>	<b>Hispanics</b>	<b>Asians</b>	<b>TOTALS</b>
<b>Dismissed</b>	4	1	3	1	<b>9</b>
<b>1.7-1.99<sup>3</sup></b>	3	5	5	2	<b>15</b>
<b>2.0-2.49</b>	11	5	7	1	<b>24</b>
<b>2.5-2.99</b>	15	6	6	2	<b>29</b>
<b>3.0-3.49</b>	4	1	1	1	<b>7</b>
<b>3.5-4.0</b>			1		<b>1</b>
<b>TOTALS</b>	<b>37</b>	<b>18</b>	<b>23</b>	<b>7</b>	<b>85<sup>4</sup></b>

<sup>1</sup> Although the LSAC was instructed to refer to AAMPLE ® only those applicants with LSAT scores between 130 and 145, several students accepted into the AAMPLE ® alternative admission program had an LSAT score of 146-148.

<sup>2</sup> Similarly, several AAMPLE ® students invited through LSAC referral had an LSAT score of 125-129.

<sup>3</sup> NSU Law students earning GPAs in this range after the first year are on probation. However, while some of the 15 AAMPLE ® students (including those who have just completed their first semester of study) remain on probation, most have achieved a GPA above 2.0 and are in good academic standing.

<sup>4</sup> Two successful AAMPLE ® students deferred their matriculation.

9. To place the first year academic performance of the AAMPLE Online® students in perspective, the median GPA of all NSU Law students at the end of the initial year of study is between 2.5 and 2.6. Moreover, while slightly more than ten percent of AAMPLE Online® students were academically dismissed from NSU Law, that figure is not substantially above the normal academic attrition rate of six to eight percent of the first year class.
10. AAMPLE Online® is an alternative admission process that is distinctly different from a traditional conditional admission program. The following table sets forth some of the key differences between the typical conditional admission program and AAMPLE Online®.

Conditional Admission Programs	AAMPLE Online®
On-campus: requires students to relocate for duration of program (costs include full tuition and living expenses)	Online: students continue residence/work location (cost is a fraction of normal tuition with no added living and relocation expenses)
Program extends for at least a full semester, usually a complete academic year	Abbreviated eight-week admission process dramatically reduces investment of time
Students are required to enroll in a full or almost full complement of courses (usually 4 or 5 per term)	Students study only two subjects
Students take regularly offered courses	Two courses are specially constructed by faculty
Students are mixed in classes with students already admitted through the regular admission process	Classes consist solely of AAMPLE® students who are seeking the opportunity to enroll in classes with regularly admitted students
Remedial nature of program demands a substantial academic support component	Because AAMPLE® is an admission process that assesses student's ability and aptitude, academic support is inappropriate and not available
A very high percentage of conditionally admitted students are eventually accepted into the regular academic program and receive credit for classes completed during conditional admission period	Only a relatively small percentage of AAMPLE® students are successful and those admitted do not receive credit for the specially constructed abbreviated courses

11. The unique alternative admission approach of the AAMPLE Online® program has been recognized by the Law School Admission Council and the United States Congress. The LSAC awarded NSU Law a \$25,000 start-up grant to explore extending AAMPLE Online® to other law schools. The Congress appropriated \$250,000 to support AAMPLE Online® through the Fund for the Improvement of Post-Secondary Education in the Department of Education as a method to determine the qualifications of minority students for admission to law school.

12. NSU Law has licensed the AAMPLE Online® alternative admission process to two other ABA accredited law schools – Albany Law School and New York Law School. These schools have used AAMPLE Online® to accept students who otherwise would not have been admitted to their law programs. The academic performance of the AAMPLE Online® students admitted by Albany and New York Law is well above what was predicted by their low LSAT scores.
13. The deans and admission officials of at least five other ABA accredited law schools have expressed interest in participating in the AAMPLE Online® alternative admission process.

Joseph D. Harbaugh  
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State of Florida     )  
County of Broward    )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized to administer oaths, personally appeared Joseph D. Harbaugh, who is personally known to me, was duly sworn to tell the truth, and having done so, says that the foregoing statements are true and correct.

IN WITNESS WHEREOF I set my signature and official seal this 21<sup>st</sup> day of February, 2005.

Josephine Eterno NOTARY PUBLIC  
Josephine Eterno Print Name

